

Procedures for Crown Consultation with Aboriginal Communities on Mineral Exploration – Mineral Resources Division, Manitoba Science, Technology, Energy and Mines

The Government of Manitoba recognizes it has a duty to consult in a meaningful way with First Nations, Métis communities and other Aboriginal communities when any proposed provincial law, regulation, decision or action may infringe upon or adversely affect the exercise of an aboriginal right or treaty right of that Aboriginal community. This duty arises out of the recognition and affirmation of aboriginal and treaty rights under section 35 of the [Constitution Act, 1982](#).

Manitoba Science, Technology, Energy and Mines (the Department) has developed these Procedures for consultation with First Nations, Métis communities and other Aboriginal communities (collectively called “Aboriginal communities” in these Procedures) about mineral exploration activities. The Procedures outline the approach that the Mineral Resources Division (MRD) of Science, Technology, Energy and Mines will use to carry out the Crown’s duty to consult about mineral exploration activities.

In these Procedures, “consultation” means the duty of consultation of the Crown relating to the recognition of Aboriginal or treaty rights under section 35 of the *Constitution Act, 1982*. In these Procedures, references to “adverse effects” means “adverse effects on the exercise of aboriginal or treaty rights” and “affected Aboriginal community” means any Aboriginal community whose aboriginal or treaty rights may be infringed or adversely affected.

Objectives

The objectives of these Procedures are to:

- provide for a consultation process of a nature and scope that is commensurate with the potential level of effect on the exercise of treaty and Aboriginal rights;
- clarify the roles of the Department and minerals industry in consultation; and
- establish a clear, certain, timely, and effective process for communication, information sharing and meaningful consultation with respect to mineral exploration and development.

Manitoba views the consultation process reflected in these consultation procedures as helping to build positive relationships between the Government of Manitoba, Aboriginal communities and the minerals industry on issues related to mineral exploration and development.

It is important for the Crown and Aboriginal communities to actively participate in the consultation process in a full and timely manner. An effective consultation procedure

should enable the Aboriginal communities to learn about the proposed exploration activities, to advise of their concerns, if any, about potential effects of the proposed exploration on the exercise of their treaty and aboriginal rights and to exchange information about those concerns. The process should then enable those concerns to be considered by the Crown and addressed quickly and effectively, so that decisions about mineral exploration and development activities may be reached in a timely way.

An effective consultation process will allow the Crown to make informed decisions about any potential effects on the exercise of treaty and aboriginal rights without unduly delaying or discouraging investment in Manitoba's mineral resources, which benefits all Manitobans, including Aboriginal people who live and work near areas of mineral exploration and development.

The Government of Manitoba's draft [Provincial Policy for Crown Consultation with Aboriginal Peoples](#) dated July 10, 2007 reflects the framework through which the Government is meeting its consultation responsibilities. These Procedures will be used by MRD to carry out consultation about mineral exploration activities. These Procedures are expected to be reviewed and revised from time to time to reflect updates to the Provincial Consultation Policy and the Government's experience in carrying out consultation.

Consultation about Mineral Exploration

MRD is responsible for coordinating, on behalf of the Government, consultation about Crown decisions relating to mineral exploration activities when the proposed activities might adversely affect the exercise of aboriginal or treaty rights. MRD will coordinate the participation in the consultation process of other Provincial departments responsible for the issuance of any provincial licences, work permits or other authorizations required for mineral exploration activities.

MRD will consult about the issuance of mineral exploration licences, work permits and other authorizations for mineral exploration. A complete list of the authorizations required for various mineral exploration and development activities can be found in the [Exploration and Mining Guide](#) on the MRD website.

MRD will undertake an initial assessment of the proposed mineral exploration activities and the Aboriginal communities that might potentially be affected by an authorization for such mineral exploration activities. Where MRD considers that the exercise of treaty and Aboriginal rights of an Aboriginal community might be affected, MRD will initiate consultation with that community. MRD will also consider any known views of any Aboriginal community in the initial assessment. MRD will, at an early stage, advise the company proposing the mineral exploration activities of the communities with which MRD initiates consultation and will also promptly advise of any additions to or deletions from that list of communities.

The following factors will be considered during the initial assessment of the effects of a proposed mineral exploration project by MRD to help determine the need for consultation:

- type of exploration activity being proposed
- location and level of sensitivity of the area
- the amount of land that will be used
- whether there are isolated or widespread impacts
- whether the potential for, or extent of, impacts is certain or uncertain
- whether the impacts are more likely to affect treaty and Aboriginal rights or traditional activities (hunting, fishing, trapping, gathering, sacred sites)
- whether the lands to be used are required indefinitely (as opposed to short term)
- whether the lands required have been previously used for the same or a similar purpose
- whether there has been any consultation about similar projects
- any concerns or issues, or other information, that have been provided to MRD by an Aboriginal community.

MRD's approach to consultation includes consulting in stages about activities that are being undertaken at a particular time, reflecting the nature of the mineral exploration and development process. Consultation will relate to Crown decisions about mineral exploration activities contemplated at a particular time. The approach may include a commitment at the time a Mineral Exploration Licence is issued to consult about the potential effects of particular mineral exploration activities contemplated throughout the duration of the Licence and also a commitment to further consultation about ongoing mineral exploration and consultation at the time of the application for a Mineral Lease at a stage where actual mining activity is contemplated.

This approach to consultation will be communicated to Aboriginal communities that may be affected so that they understand that consultation about exploration activities would not constitute consultation about subsequent mining development, if that should proceed. Where a mine development project is proposed, MRD will consult with any Aboriginal communities that may be affected by that project. MRD has developed a separate set of [consultation procedures for mine development projects](#).

Consultation will be conducted with the objectives of understanding what the known or reasonably asserted Aboriginal or treaty rights are and considering how adverse effects on the exercise of those rights might be eliminated or minimized.

Where consultation is with a First Nation, MRD will initiate consultation with Chief and Council of the First Nation. Where consultation is with an Aboriginal community other than a First Nation, such as a Métis community, MRD will initiate contact with the appropriate representatives of the community. MRD will determine the appropriate community contacts for other Aboriginal communities with the assistance and advice of the Government's Consultation Interdepartmental Working Group and Aboriginal Consultation Unit.

Where the activity is in a Resource Management Area (RMA), the role of the Resource Management Board (RMB) to consider and advise on proposed mineral dispositions that are referred to the Board will be respected. However, the RMB is not responsible for consultation.

Companies are encouraged to engage with Aboriginal communities at their earliest convenience, to discuss their proposed mineral exploration activities and develop a working relationship. Companies should keep MRD informed about all of their efforts to engage with Aboriginal communities. MRD is ultimately responsible for ensuring adequate consultation takes place, and companies will not be engaged directly in the Crown consultations except by express invitation. Nonetheless companies have an important role throughout the consultation process; it being anticipated that companies will provide information to Aboriginal communities about their exploration activities, seek input from the community on concerns regarding potential adverse effects on the exercise of treaty and Aboriginal rights and develop measures to address any potential effects. This will assist MRD in meeting the Crown's consultation responsibilities. Where documentation on Aboriginal community engagement is provided to MRD, it will be incorporated into the consultation process.

MRD can provide companies with contact information for Aboriginal communities located in the general vicinity of their proposed mineral exploration activities.

Mineral Exploration Licences

The following consultation procedures will be followed upon receipt by MRD of an application for a mineral exploration licence:

1. Upon receipt of an application for a mineral exploration licence under section 51 of [*The Mines and Minerals Act*](#), MRD will send a notice letter to Aboriginal communities whose exercise of treaty and Aboriginal rights may be affected by any future on-the-ground exploration activities. The notice letter will include a map and details of the location of the proposed mineral exploration licence and a description of the company's planned exploration activities. At the licence application stage, a company's exploration plans will be very general in nature.

Note: In addition to the consultation process, mineral exploration licence applications within a Community Interest Zone (CIZ) established under the Treaty Land Entitlement (TLE) Framework Agreement are governed by the conditions of the Agreement. The Agreement provides, among other things, that an Entitlement First Nation has 45 days to respond to a notice of a proposed disposition that it intends to select the land for treaty land entitlement purposes.

2. Aboriginal communities will be advised in the notice letter that they will have 30 days, or 45 days in the case of a mineral exploration licence within a RMA or CIZ, to provide a response outlining any concerns the Aboriginal community may

- have about the mineral exploration licence, including any potential adverse effects of the licence or activities under the licence on the exercise of treaty and Aboriginal rights by the Aboriginal community or its members, as well as options to address any such effects. The Aboriginal community may request an extension to the response date and an extension will be considered by MRD provided that MRD and the community can agree upon another response date.
3. Based on the response from the Aboriginal community, MRD and the community may have further communication, including meetings where appropriate to ensure the community is adequately consulted. MRD will endeavour to address the concerns identified by the Aboriginal communities in a timely manner in considering the application for the mineral exploration licence.
 4. MRD will include appropriate conditions on mineral exploration licences. All licences will include a condition requiring the holder to comply with all applicable laws and to obtain all authorizations required to carry out on-the-ground exploration activities. Where these activities might affect the exercise of Aboriginal or treaty rights, MRD may consult further with affected Aboriginal communities, as appropriate for the nature of the activity and possible effects. Licences and accompanying documents may also include appropriate conditions to address potential adverse effects on the exercise of treaty and Aboriginal rights.

MRD expects to be able to consider and make a decision in relation to applications for a Mineral Exploration Licence within 90 days of receipt of the application for the Licence; however depending on the issues relating to specific applications some applications may require a longer period to be considered.

Mining Claims

The holder of a Prospector's Licence may stake a claim on open Crown land. The licensee has 30 days after staking the claim to apply to register the claim. A claim staked in substantial compliance with the requirements for recording will be registered.

Every three months MRD provides Aboriginal communities with maps showing claims in the vicinity of the First Nation. MRD will provide holders of newly-registered claims with contact information for First Nations in the vicinity of the claims. Claim holders are expected to engage with Aboriginal communities prior to commencing exploration on their claims. MRD will consult on exploration activities on claims as outlined below.

Consultation about specific Exploration Activities

MRD will engage in consultation about mineral exploration activities using an approach where the nature and scope of consultation is commensurate with the potential level of effect of the proposed mineral exploration activities on the exercise of treaty and Aboriginal rights.

MRD's consultation process for exploration activities is triggered by an application for a work permit or other authorization. These consultations Procedures are intended to work in concert with Manitoba Conservation's guidelines for the issuance of work permits or other authorizations for mineral exploration activities.

Certain mineral exploration activities such as airborne surveys, prospecting, and geological mapping do not generally require a work permit because they have little or no impact on the land. In view of the fact that there is no decision to be made by the Crown about these activities, MRD will not be consulting on exploration activities that do not require work permits or other authorizations. Companies carrying out low impact exploration activities are encouraged to meet and discuss their exploration activities with Aboriginal communities.

Aboriginal communities may advise MRD that they wish to be notified of all exploration activity in their area. MRD will in turn advise holders of mineral exploration licences, claims and mineral leases of the community's request for notification.

After receiving an application for a work permit MRD will conduct an initial assessment of the proposal to determine any First Nations, Métis communities or other Aboriginal communities that might be affected and to determine any consultation requirements.

In conducting the initial assessment MRD will also determine whether the application includes the necessary information to enable the Crown to consult meaningfully with potentially-affected Aboriginal communities. Where, either as a result of the initial assessment or as a result of a request from an Aboriginal community, MRD determines that any additional information is required, MRD will advise the applicant of any additional required information.

MRD will provide notice of the application for a work permit or other authorization to the Aboriginal communities whose exercise of treaty and Aboriginal rights might be affected by the proposed mineral exploration activity. The time frame for response to the notice will depend on MRD's assessment of the potential for the exploration work to adversely affect the exercise of treaty and Aboriginal rights. The greater the potential impact the longer the notice period. MRD in carrying out its duty to consult must provide Aboriginal communities being consulted with enough time to assess the potential adverse impacts of the proposed activity, to prepare their views on the matter and to present their concerns.

[Table 1](#) is a list of exploration activities that require a work permit or other authorization from Manitoba Conservation. For each activity the table lists:

- Manitoba Conservation's anticipated application review period;
- The time frame for Aboriginal communities to respond to MRD's notice of the application.

MRD expects that the majority of work permits and other authorizations would be issued within 30-60 days of the date of application. Table 1 describes the anticipated time frames associated with work permit applications. After receiving an application, MRD will provide notice to an affected Aboriginal community and would expect a response within the time frames set out in Table 1. Companies should submit their applications for work permits as soon as possible to provide Manitoba Conservation and MRD with as much time as possible to complete the application review process and carry out consultation.

Where a company plans to carry out exploration in a RMA, the company may elect or may be asked by Manitoba Conservation or MRD to meet with and make a presentation to the RMB.

MRD's consultation time frame may be shortened where companies have shared information with the Aboriginal communities about planned exploration activities, gathered information on the community's interests and concerns and suggested measures that could address the concerns. Unless MRD has reached an understanding with an Aboriginal community, the minimum notice period for work permits is 10 calendar days.

Aboriginal communities may request an extension of the response time. An extension will be considered by MRD as long as this does not unduly affect the ability for MRD and Manitoba to make decisions about the application within 30-60 days.

If MRD does not receive a response within the specified time frame, MRD will proceed with decision-making using available information.

The Aboriginal community will be advised of MRD's decision and any special conditions included on the work permit or other authorization. MRD as part of the consultation process may at the request of the community hold further discussions.

Where MRD receives comments from an Aboriginal community about how the proposed exploration activity might affect the exercise of treaty and Aboriginal rights, further consultation may be required in order for MRD to understand how the proposed activities may adversely affect those rights. Where further consultation is required MRD will endeavour to resolve the concerns identified by the Aboriginal community in a timely manner prior to making recommendations on issuance of the permit or other authorization. The applicant may be involved at this stage of consultation to assist in addressing the community's concerns.

In response to an Aboriginal community's comments, MRD may meet with the community to discuss the proposed exploration activities. Such a meeting should occur within 30 days of receiving the comments. The company may be invited by MRD to attend the meeting to provide information about its planned activities and participate in discussions about the community's concerns. If the company is to be invited to directly participate in the consultation process, the Crown will provide reasonable notice of when and where the company should attend and as much advance notice as possible about what issues or concerns it may be asked to comment on or provide information about. Discussions at the meeting will focus on how the community uses the land and how the proposed exploration activity may affect the exercise of treaty and Aboriginal rights.

MRD will advise the Aboriginal communities of the government decision and how the information and concerns received from the community were considered.

MRD will continue to work with Manitoba Conservation, the minerals industry and Aboriginal communities to streamline the work permit review and consultation process for mineral exploration activities.

Advanced Exploration Projects

An advanced exploration project is defined as: excavation of an exploration shaft, adit or decline; construction of an all-weather access road to an advanced exploration site; diversion, alteration or damming of a natural watercourse for purposes of bulk sampling, mine development or mining; de-watering of a shaft, adit or decline for underground exploration and development purposes; removal of a bulk sample of at least 500 tonnes of material for testing or other similar activities that may be associated with an advanced exploration project. Prior to beginning an advanced exploration project, the proponent must submit project plans and mine closure plans with a financial security deposit. The proponent may also be required to submit a proposal for an Environment Act licence.

MRD will provide notice of an application for an advanced exploration project to Aboriginal communities whose treaty and Aboriginal rights may be affected by the proposed project. MRD will arrange to meet with potentially affected Aboriginal communities to discuss the proposed advanced exploration project and the consultation process. Such a meeting should occur within one month. It is expected that consultation on proposed advanced exploration projects will take up to 3 months depending on the potential for the project to adversely affect the exercise of treaty and Aboriginal rights; however depending on the issues relating to specific projects some consultation processes may require a longer period.

Notice and Information Sharing

In its notice to Aboriginal communities MRD will provide as much detail as possible about the proposed mineral exploration activities. In general, and subject to reasonable confidentiality issues and requirements referenced below, the information filed with a work permit application is included in the package of information provided to Aboriginal communities.

It has been MRD's experience that the more detailed the information provided with the notice the less time is required to complete consultation. As a minimum, the notice will outline the location, nature, and extent of the proposed exploration activities and should include technical and descriptive information, such as diagrams and appropriate maps in order to provide the Aboriginal communities with an understanding of the on-the-ground impact of the proposed activity.

The Department will hold discussions with Aboriginal communities about the best way to share information. Electronic copies of materials will be provided to the community when possible.

The Department also expects companies to contact the Aboriginal communities and share information about their proposed exploration activities. Companies should consider meeting with Aboriginal communities to provide an opportunity for the community to have the information explained to them. It also assists MRD in its consultation if the companies report on their efforts to engage communities.

It is important that all relevant information regarding the proposed exploration activities is provided to Aboriginal communities in a manageable and understandable format and in a timely manner. Where the company is using recognized national or international "best practices" to mitigate environmental impacts, information on the measures should be provided. The company's proposed mitigation measures may, where appropriate, be included as conditions of approval on a work permit or other authorization.

MRD will continue outreach work with Aboriginal communities to develop an improved understanding of the mining cycle and the potential impacts of mineral exploration and development activity.

With respect to any sharing of information, proprietary and intellectual property interests, privacy interests and confidentiality requirements of parties, including the confidentiality provisions of *The Mines and Minerals Act*, will be respected in the consultation activities. MRD recognizes that companies have concerns about disclosure of proprietary information to competitors, and that companies may be under strict requirements imposed by securities legislation and rules in relation to the timing of public disclosure of information, and those concerns and requirements are to be respected. MRD also recognizes that any proprietary interest in information from Aboriginal communities will also be respected.

Accommodation Measures

In making any decision MRD will consider potential accommodation measures to address any adverse effects on the exercise of treaty and Aboriginal rights, where appropriate.

Where appropriate, MRD may discuss with the company, possible measures necessary to address the potential adverse effects on the exercise of treaty and Aboriginal rights. MRD expects that in most cases a mutually satisfactory solution can be reached.

Separately from the Crown, a company and an Aboriginal community may develop measures, including MOUs or similar arrangements to address potential adverse effects and these may be considered by MRD in making any decisions.

Reasonable measures required to address adverse effects on the exercise of treaty and Aboriginal rights may be imposed as conditions of a work permit or other authorization.

MRD recognizes that where in considering any particular application that it will provide the company with an opportunity to consider and comment on potential measures that are not typical conditions of authorizations intended to address potential adverse effects on the exercise of aboriginal or treaty rights of Aboriginal communities before any final decision is made with respect to such conditions.

In certain circumstances MRD may require a site inspection before a work permit or other authorization is issued. MRD will consider its initial assessment and any concerns expressed by Aboriginal communities to determine whether a site inspection is appropriate.

Continued Rights in Claims, Licences and Mineral Leases

MRD considers existing mineral exploration licences, claims and mineral leases under *The Mines and Minerals Act* to continue to be valid and their validity is not affected by the Crown's duty to consult and accommodate. Where, through consultation, MRD determines that the exercise of treaty and Aboriginal rights would be seriously adversely affected on a portion of the area under a mineral exploration licence, mining claim or mineral lease, MRD may restrict surface access or activities on that area to address those effects.

Where a portion of a licence, claim or lease is determined through consultation to contain an environmentally sensitive area or a cultural, burial or spiritual site, accommodation measures, where appropriate, may be taken, including possible conditions of licences or approvals and possibly restricting access to and activities on these lands under *The Mines and Minerals Act*.

Fairness in Considering Applications

MRD recognizes that it also has a duty to applicants to consider applications fairly and without bias. MRD will consider applications for mineral exploration licences, work permits and other authorizations for mineral exploration in a manner that recognizes both the duty of consultation with Aboriginal communities and the duty of fairness to applicants.

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**Table 1: Mineral exploration activities that require work permits
(currently under development by Industry-Government Work Permit Review Committee)**

Activity	Specified activity	Conservation review period from date application is received	Period for response to MRD from date letter is received by Aboriginal community (calendar days)
Access Road			
General Permit or Environment Act Licence may also be required	Summer (existing)	2 weeks	15
	Winter (existing)	2 weeks	15
	Winter (construction)	2 - 4 weeks	15 - 30
	Summer (construction)	2 - 4 weeks	30
Camps			
General Permit or Environment Act Licence may also be required	<10 person (existing clearing)	<1 week	10
	<10 person (clearing required)	2 weeks	15
	>10 person (existing clearing)	2 weeks	15
	>10 person (clearing required)	2 - 4 weeks	30
	Pressurized water system	2 - 4 weeks	30
Drilling			
	Existing road access	2 weeks	15
	Fly-in	2 weeks	15
	Trail construction < 1 km	2 weeks	30
	Ice-covered	2 - 4 weeks	30
	Riparian Zone	2 - 4 weeks	30
Biochemical sampling			
	General - Plants/Trees	<1 week	10
Fuel, equipment caches			
GP required for more than one field season	Fuel	2 weeks	15
	Equipment	2 weeks	15
Prospecting			
	Hand tools	<1 week	10
	Mechanized	2 weeks	10
Excavation - Mechanized			
	Trenching - Bedrock	2 - 4 weeks	30
	Trenching - Soil	2 - 4 weeks	30
	Soil stripping	2 - 4 weeks	30

Activity	Specified activity	Conservation review period from date application is received	Period for response to MRD from date letter is received by Aboriginal community (calendar days)
Geological mapping			
	General mapping	<1 week	10
	Stripping	<1 week	10
Blasting			
	General	2 - 4 weeks	30
Land-based geophysical exploration			
	Gravitational	2 weeks	15
	Magnetic	2 weeks	15
	Induced polarization	3 - 4 weeks	30
	Resistivity	3 - 4 weeks	30
	Electromagnetic	3 - 4 weeks	30
	Sensing	3 - 4 weeks	30
	Seismic	3 - 4 weeks	30
Line-cutting			
	Hand tools	<1 week	15
	Chain saw	2 weeks	15
	Mechanized	3 - 4 weeks	30
Soil, till, and lake sediment sampling			
	Hand	<1 week	10
	Water and lake	2 weeks	15
	Mechanized	3 - 4 weeks	30